THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.25079 of 2001

ORDER:

1 Sai Durga Hills Plot Owners Welfare Association (the Association) filed this Writ Petition seeking a direction to the first respondent to issue final lay out in respect of the land in S.No.74/11 of East Marredpally corresponding to T.S.No.2/1, Ward No.131 of Secunderabad.

2 In his affidavit filed in support of this petition, the president of the petitioner association alleged that 9,568 Sq. Yards in S.No.74/11 of East Marredpally corresponding to T.S.No.2/1 of Ward No.130, covered by a tentative lay out sanctioned by the first respondent on 22.02.1996 in favour of Pravin Kumar and others was purchased by 23 members of the petitioner association after verifying the title of the vendors and the pahanies for the years 1955-56, 1964-65, 1973-74 and 1981-82, which disclosed that their vendors as the owners and possessors of S.No.74/11 of East Marredpally. Letter of the second respondent and the letter dated 17.10.1995 of the Deputy Director Survey and Land Records, Hyderabad District also show that the land purchased by its members belong to private parties. In fact, the Urban Land Ceiling Authorities had issued a clearance certificate in favour of the vendors of its members. So the title of its members to the land purchased by them is beyond doubt. As the vendors of the members of the Association are not evincing interest in obtaining final lay out to enable its members to complete the constructions in the plots purchased by them, this petition is filed seeking a direction to the respondents to release the final lay out though Rs.60,000/- was paid at the time of granting of preliminary lay out and black top roads were laid and drains were constructed and an amount of Rs.1,56,000/- was paid after the Chief City Planner issued proceedings dated 06.02.1997 calling upon them to pay development charges in spite of several requests.

3 The Chief City Planner of the first respondent filed his counter affidavit on behalf of the first respondent inter alia contending that he

approved a tentative lay out on 22.09.1996 only to enable the applicants to demarcate the boundaries, roads and open spaces. Though the applicants, through the letter dated 06.02.1997 were asked to remit an amount of Rs.8.62 lakhs towards formation and laying of black top and concrete roads etc, they made only a party payment and did not pay the betterment charges with a request to allow them to provide amenities like laying internal roads etc. After the petitioner Association was asked to pay the full amount and obtain final lay out, it was learnt through the second respondent that a land grabbing case in LGC No.167 of 1998 was filed against the owners of the land in S.No.74/11 of East Marrepally village in the Land Grabbing Court and the Government of Andhra Pradesh issued G.O.Ms.No.528, MA, dated 25.09.1997 amending layout rules with regard to maintenance of minimum road width. For that reason and inasmuch as the tentative layout does not authorize making of or sale of the plots made, purchasers of the plots are not entitled to any relief in view of Section 388 of Hyderabad Municipal Corporation Act (the Act). After verification of the revised layout proposals submitted by the applicants it is found that several rooms were constructed on the road margin in front of plot No.23, towards North-East corner of the layout, and a residential building in the area reserved for open space for park and for public purpose was constructed on the northern side of the layout, and a huge temple in the open space adjacent to plot No.1 and 14 at the entrance of the layout was also constructed and the open space of 863 Sq. meters as per the approved tentative layout stood reduced to 530 Sq. meters and that dimensions of the proposed plot are not indicated and the sketch plan issued by the Urban Land Ceiling Authorities along with the proceedings dated 20.05.1994 and 18.07.1994 showing the retainable and surplus land was not enclosed for verification. From out of the total area of 1,22,622 Sq. meters clearance was given to an extent of 8,583.89 Sq. meters only, as per the revised layout the said area is reduced to 7,692.12 Sq. meters and from out of the area cleared by the Urban Land Ceiling Authority, the applicants sold 600 Sq. yards without

obtaining sanction from the first respondent or approval under Section 388 of the Act. For these reasons the revised layout proposals were rejected and the approved tentative layout was cancelled and the demand drafts submitted by the applicants for Rs.1.90 lakhs and Rs.19,000/- were returned. As the plan submitted for final layout is not tallying with the existing ground position and is not satisfying the layout rules of 1965 and as 10% of the land which should be reserved for roads, which should have a minimum width of 40 feet is not available, petitioner is not entitled to the relief sought.

4 The Mandal Revenue Officer Marredpally Mandal filed his counter affidavit on behalf of the second respondent inter alia contending that the land in S.No.74 of Marredpally Paigah village admeasuring Ac.306.15 guntas is Government Poramboke land as per pahani patrika of 1356 Fasli, for which there were no sub-division numbers and as no supplementary sethwar is available the so called sub division of S.No.74/11 is a mischievous entry made by the earlier patwaries. Pattas granted by then Jagirdars after abolition of the jagirs as per Jagir Abolition Act Fasli 1358 have no validity and so the entries made in the pahanies in the name of their kith and kin after abolition of jagirs are void. Town survey conducted between the years 1969-76 was based on the mischievous entries made in the pahani patrikas by the then patwaris. As the one-man commission report wherein one of the recommendation is to regularize the area occupied by collecting a percentage of Market value was accepted by the Government vide memo No.2678/Assn. III (2)/87-25 dated 10.2.1994. It impliedly means that the land in S.No.74 of Marredpally Paigah Village is a Government land. Praveen Kumar, vendor of the members of the petitioner association, by creating false and fictitious document might have misled the members of the petitioner association. As second respondent issued the letter only to show that the land is recorded in favour of different individuals it does not cease to be a government land. Though the letter of the Deputy Director of Survey and Land Records dated 17.10.1995 shows that town survey

was conducted by taking into consideration the revenue records maintained by the village officers it does not create any right in the vendor of the members of the petitioner association who misrepresented to the Chief City Planner that the then Collector had issued no objection certificate in respect of the said site by creating a forged document resulting in a criminal case being filed against the said Praveen Kumar, for forgery.

5 The contention of Sri Rajender Reddy, learned counsel for the petitioner, is that the members of the petitioner society purchased the lands only after satisfying themselves that their vendors have title to the land and inasmuch as the Special Officer cum competent authority under Urban Land Ceiling by his proceedings dated 20.05.1994, held that vendors of the members of the petitioner society i.e. Praveen Kumar and others are entitled to hold an extent of 1,000 Sq. Meters each in S.No.74/11 corresponding to T.S.No.2/1 in Ward No.130 of Marredpally village, the title of the members of the petitioner society for the land purchased by them in S.No.74/11 of Maredpally is beyond doubt because Urban Land Ceiling authorities would issue clearance only after enquire into the title of the persons and as the proceedings issued by the Special Officer–cum– Competent authority of Urban Land Ceilings dated 20.05.1994 became final, respondents cannot be hard to say that inasmuch as Praveen Kumar, the vendors of the members of the petitioner society is doubtful, they did not acquire title to the land in respect of which the layout is sought, and contended that inasmuch as the vendors of the members of the petitioner society and its members paid huge amounts towards development charges and developed the site and as they who are all middle class employees want to construct houses in the plots purchased by them by spending huge amounts, the respondents may be directed to release the final layout. He relied on ***Hyderabad Potteries Private Limited Vs. Collector, Hyderabd District***[1] in support of his contention that first respondent has no right to

reject the application seeking permission to construct on the basis of the objections raised by the Joint Collector that the land where the building intended to be built is Government land or solely on the basis of entries in the Town Survey and Land Register (TSLR) because by the grant of permission title of the applicant would not be confirmed against the others who are claiming title thereto.

6 The contention of Smt. Kalpana Ekbote learned standing counsel for the first respondent is that inasmuch as a tentative layout only was sanctioned in favour of the vendors of the members of the petitioner society with an endorsement “Plan communicated to the party to demarcate the boundaries, roads and open spaces of the layout. This communication does not confer any right of sale or allotment of the plots. Permission accorded does not bar the application of the provisions of the Urban Land Ceiling and Regulation Act, 1975”, members of the petitioner society cannot claim a valid title to the plots purchased by them in view of Section 388 of the Act and as the vendors of the members of the petitioner society could have played fraud on them by showing some false documents, merely on the basis of the purchase of the plots by the members of the petitioner society, they, who have not complied with the requirements sought by the first respondent are not entitled to seek a direction to release a final layout, more so because during the interregnum period there is a change in the layout Rules by virtue of G.O.No.528 dated 25.09.1997, as per which a minimum width of 40 feet has to be maintained in all respects of all the roads and as many buildings came up in places shown as open spaces, and as the vendors of the members of the petitioner society did not deposit Rs.8.62 lacs demanded and as a criminal case is pending against Praveen Kumar one of the vendors of the members of the petitioner society.

7 The contention of the learned Government Pleader for Revenue, appearing on behalf of the second respondent, is that though the land in S.No.74 which belongs to the government was not actually subdivided and no sethwaris showing its sub divisions are in existence the former

village patwaries, in collusion with the then pygah made false entries in the revenue registers as if S.No.74 was subdivided and entered the names of some persons as if they are in possession of some of those sub divisions and as many persons encroached into the said government land, LGC No.167 of 1998 was filed for their eviction in the Special Court, constituted under the provisions of the Lang Grabbing (Prohibition) Act, 1982 which is still pending and so the petitioners are not entitled to the relief sought.

8 In reply the contention of the learned counsel for the petitioner society is that inasmuch as petitioners are not parties to the said LGC No.167 of 1998 said to have been filed by the Government in respect of the land in S.No.74, and as the factum of the vendors of the members of the petitioner society filing declaration under Urban Land Ceiling Act and the Special Officer-cum-competent authority issuing proceedings dated 20.05.1994 showing that Praveen Kumar and others i.e. the vendors of the members of the petitioner society are entitled to hold 1,000 Sq. Meters each is not denied or disputed, and the amended layout rules which came into force subsequently do not apply to pending applications, petitioner is entitled to the relief sought.

9 Though the judgment of the Special Tribunal constituted under the Land Grabbing (Prohibition) Act, 1982 can be treated as a judgment in rem in view of Section 8(6) of that Act, which reads

> "Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land."

and as this petition is not relating to the title of the members of the petitioner society, but relates to the question whether the petitioner Society is entitled to seek a direction to the first respondent to release the final layout, the point for consideration in this writ petition is whether the

petitioners are entitled to seek a direction to the first respondent to release a final layout.

10 The tentative layout sanctioned to the vendors of the members of the petitioner society contains an endorsement that it does not confer any right of sale or allotment of plots. The vendors of the members of the petitioner society are not parties to this petition. It is the specific case of the first respondent is that inasmuch as the vendors of the members of the petitioner society did not deposit Rs.8.62 lakhs demanded from them, their application could not be processed. Petitioner did not produce any document to show that the amounts demanded by the first respondent for processing the application for layout were in fact deposited by them or the vendors of the members of the petitioner society. So question of directing the first respondent to release the final layout does not arise. Question whether G.O.528 dated 25.09.1997 applies to the pending applications for layout is not necessary to be decided for disposal of this writ petition, because the tentative layout sanctioned does not permit sale of the land covered thereby as plots.

11 It is not the case of the petitioner that either it or its members had, after purchase of land from their vendors, made a fresh application for a layout. Unless there is an application by the petitioner for a layout, and unless the petitioner pays the amounts demanded by the first respondent towards betterment charges etc., and unless the layout submitted is in accordance with the rules in existence at the time of submission of the application, question of this court granting a direction to the first respondent to release the final layout does not arise.

12 Hyderabad Potteries Limited case (1 supra) relied on by the learned counsel for the petitioner is of no help to the petitioner because that case relates to construction of building and does not relate sanction of layout.

13 In view of the above I find no merit in this petition and so the writ petition is dismissed. No costs.

Justice C.Y.Somayajulu

26.10.2007
kvsn

---

[1] 2001 (3) ALT 200